

I. EDRP Recommendations re. Behavioral Expectations/ Codes of Conduct:

A. City Council and the Mayor should establish rules/ expectations that govern their interaction, and those of their staff, with city administration, city employees and with lobbyists/developers/city contractors and those who act on their behalf.

These rules should:

- Require that elected officials sign a pledge of behavior/code of ethics at their first meeting. /execute a Code of Ethics, at or before the first meeting of Council at which they are seated, the original of which shall be filed with the Clerk of Council.
- recognize that developers seeking financial assistance or land use approvals from the City should be directed to the city manager's office.
- recognize that the role of council is legislative and that members of council and the mayor may not, except for the purpose of inquiry, attempt to direct the administrative service for which the city manager is responsible.
- Recognize that the role of council is legislative and those members of council and the mayor may not, except for the purpose of inquiry, attempt to direct the administrative service for which the city manager is responsible.
- Remind officials that it is improper for elected officials or their staff (or anyone else for that matter) to attempt to privately influence the decision makers who will be conducting quasi-judicial hearings and making decisions based on those hearings. In particular, The Code of Ethics should specifically underscore that elected officials must not attempt to privately interfere with quasi-judicial proceedings of boards and commission or the Zoning Hearing Officer and should adopt an ordinance requiring the Zoning Hearing Officer and members of such boards to report any such contacts to the city solicitor.
- Require a council member or staff to report an offer of something of value in connection with a development project or public contract
- Address how an elected official/staff interacts with Boards and Commissions involved in development issues
- Include a specific recognition of the right and obligation of city employees to report any conflicts of interest or violations of the law they have reasonable cause to believe are occurring to City, state or federal agencies and the recognition that in doing so they are protected by Ohio's Whistleblower Protection Act (RC 4113.52) and the provisions of the Cincinnati Municipal Code Section 308-79, Protected Employees Actions.
- Should preclude the involvement of council members with contract negotiations with respect to economic development projects

- Recognize that developers seeking financial assistance or land use approvals from the City should be directed to the city manager's office.
- Recognize the restrictions on soliciting and receipt of campaign contributions from developers.
- Confirm the Mayor and Council's understanding that there is a hot line which anyone can use to report suspected impropriety and those who do so are protected against retaliation for doing so.

B. City employees and appointees.

The City Manager's office should maintain conduct rules/ expectations for all city employees and appointees, and regularly provide training and information about these expectations, together with applicable legal and administrative requirements.

These rules should:

- State expected behavior for all city employees and appointees
- Require participation in training with respect to expected behavior
- Require employees and appointees promptly to report violations of the Code of Conduct or unethical or illegal behavior to the City Manager, the Ohio Ethics Commission, law enforcement a designated hotline, or other appropriate designee, and provide contact information for making this contact.
- Inform what means of reporting improper behavior (e.g., hotlines, designated City Manager representative)
- Advise of whistleblower protections
- Prohibit attempts to privately influence decision makers who will be conducting quasi-judicial hearings and making decisions based on those hearings.

C. Developers, Contractors and Lobbyists. The City Manager's office should maintain conduct expectations for developers, contractors and lobbyists, as well as those who act on their behalf, and regularly provide training and information about these expectations. Review and enforcement may be by the City Manager or the City Manager's designee.

These guidelines should:

- State expected behavior on the part of developers and consequences for not meeting this standard
- Applicable legal and administrative requirements.
- Require the developer/contractor/lobbyist to acknowledge in writing receipt of requirements regarding expected behavior and their agreement to abide by an ethics and/or code of conduct.
- Require Developers to report breaches of the Code of Conduct to the City Manager

- Prohibit attempts to privately influence decision makers who will be conducting quasi-judicial hearings and making decisions based on those hearings
- Require them promptly to report violations of the conduct expectations or illegal behavior to the City Manager, law enforcement, a designated hotline, or other appropriate designee

Behavioral Expectations/ Codes of Conduct:

General Discussion about the importance of setting expectations.

As Evan Goldenblatt advised the EDRP: Unethical behavior erodes public trust in institutions of government. Public trust is hard to build, but easy to lose. One step in building an ethical organization is clearly stating policies and expectations. Whether they are called “behavioral expectations,” are included in a “code of conduct” or, as in the case of the City’s administrative regulation 68, as well as in the city employee handbook, Personnel Policies and Procedures. A code of conduct can set expectations and give an awareness to public officials and employees of possible conflicts. At the same time, these rules can alert the public, including those who have contact with city officials, employees and appointees, what behavior they should be able to expect and when that line is crossed.

Expectations concerning behavior should be agency-specific. Instructive expectations “should include what constitutes misconduct, how to report it, and firm non-retaliation policies when employees communicate concerns.” (Tracey, Chapter 4) Along this line, Mr. Goldenblatt advises that “materials distributed to all public employees and made accessible online should reinforce established ethical boundaries and encourage seeking an expert opinion when faced with a grey area.” In addition, such materials should “reinforce established ethical boundaries and encourage seeking an expert opinion when faced with a grey area. “

Cincinnati City Council agreed with the need for conduct guidelines, and directed the EDRP to “Propose a Code of Conduct for the City’s elected officials and developers, which Code should require developers to report inappropriate requests from the City’s elected officials.” Ordinance 384, December 16, 2020. However, given the events that led to the formation of the EDRP, the EDRP recommends a more comprehensive action be taken: the development of behavioral expectations for key stakeholders beyond elected officials and developers. Consequently, it is the recommendation of the EDRP that ethical and behavioral guidelines should govern the actions of elected city officials and their staffs, city employees and appointees, as well as those who do business with the city. In so doing, it is important to note that the EDRP is aware of no allegations of inappropriate behavior by the city administration, its employees or by developers.

The EDRP familiarized itself with approaches different municipalities have taken to address ethics and governance challenges. Many have codes of conduct, and Paul Nick advised that that Chicago has a code of conduct that has been “modeled.” It contains extensive guidelines, such as ones with respect to conflicts of interest that pertain to participating in decision-making. Writing a code of conduct for each of the stakeholder groups is best left to those solely charged with this duty and with the necessary expertise and familiarity with best practices.

The EDRP, however, is in a position to recommend what components necessarily should be included in each of the three sets of guidelines it is proffering.

Elected Officials.

City Council may enact rules governing behavior of council members. It and the Mayor should lead the effort to establish rules/ expectations that govern their interaction, and those of their staff, with city administration, city employees and with lobbyists/developers/city contractors and those who act on their behalf, and should hold themselves to the same high standards as those with whom they interact.

Voters agree, now elected officials must sign a pledge of behavior/code of ethics at their first meeting. **Check wording and CITE.** Implicitly this suggests that their **be** a code of conduct/ ethics. While City Council may enact rules governing behavior, the EDRP has inquired, and has not found any such guidance it has adopted. In order to maintain a level playing field, deter inappropriate behavior, reinforce proper behavior, and re-earn public confidence, City Council and the Mayor should adopt rules for themselves that articulate the expectation of certain behaviors and remind of them of others.

While the rules may address a wide span of behaviors, it is essential that some be articulated unambiguously in the area of economic development projects. In order to reduce conflicts of interest and maintain proper roles under the City Charter, as is discussed in the development section. These rules should preclude the involvement of council members with contract negotiations with respect to economic development, or interfering in the development process. In order to maintain the impartiality of the development process, the rules should underscore that it is improper for elected officials and their staffs (or anyone else for that matter) to attempt to privately influence the decision makers who will be conducting quasi-judicial hearings and making decisions based on those hearings. In this vein the stated expectations should address how an elected official/staff interacts with Boards and Commissions involved in development issues.

Because mutual reporting by the public and private sector is the most effective approach, as Paul Nick noted to the panel, and as the EDRP is recommending that developers report improper solicitations from elected officials, these self-governing rules should require the mayor, or a council member or staff to report an offer of something of value in connection with a development project or public contract.

Finally, it is essential that as the legislative branch of city government, elected officials encourage their employees to hold them to a high standard. One way they can do this, which the EDRP recommends, is specifically to recognize by rule specific recognition of the right and obligation of city employees to report any

conflicts of interest or violations of the law they have reasonable cause to believe are occurring to City, state or federal agencies and the recognition that in doing so they are protected by Ohio's Whistleblower Protection Act (RC 4113.52) and the provisions of the Cincinnati Municipal Code Section 308-79, Protected Employees Actions.

City employees and appointees.

The City Manager's office should maintain conduct rules/ expectations for all city employees and appointees, and regularly provide training and information about these expectations, together with applicable legal and administrative requirements. In addition to stating expected behavior for all city employees and appointees, The EDRP recommends that certain topics be included, as discussed below.

There been no concerns brought to the attention of the EDRP regarding improper behavior on the part of City employees and appointees. However, as clear guidelines set the tone and inform what behavior is expected, the EDRP addresses them here. In so doing the EDRP recognizes that several sets of guidelines for city employees are already in play.

The guidelines the EDRP recommends with respect to city employees and appointees fall into four categories.

The first is that the guidelines *be specific* with respect to behavioral expectations, and that they correspond with position responsibilities of the employee, as discussed earlier. For instance, employees working in the economic development process should be familiarized with guidelines not only with respect to their roles, but also with the conduct expectations for City Council members and developers.

The second category emphasizes the importance of employee's *being knowledgeable* with the guidelines and enabling that to occur. In order to reinforce the guidelines and to assure familiarity, the rules should *require participation in training* with respect to expected behavior. When employees know what conduct is expected, they can more readily identify improper behavior. Training is described further in this report.

Next, the guidelines should *impose responsibility* on employees and appointees to participate in upholding behavioral expectations. They should be required promptly to *report violations of the Code of Conduct or unethical or illegal behavior* to the City Manager, the Ohio Ethics Commission, law enforcement a designated hotline, or other appropriate designee. At the same time, to facilitate and encourage such reporting, the guidelines *should inform employees the means of reporting improper behavior* (e.g., hotlines, designated City Manager representative), and *provide that contact information*. Employees may be reluctant to provide information about inappropriate conduct. In order to

underscore its import and to ease concerns, the guidelines should advise of whistleblower protections.

Finally, it is important to uphold transparency and fairness in the development process. Employees, as are others, should be prohibited from making any attempt to privately influence decision makers who will be conducting quasi-judicial hearings and making decisions based on those hearings.

Developers, Contractors and Lobbyists. The City Manager's office should maintain conduct expectations for developers, contractors and lobbyists, as well as those who act on their behalf, and regularly provide training and information about these expectations. Review and enforcement may be by the City Manager or the City Manager's designee.

These guidelines should:

- State expected behavior on the part of developers and consequences for not meeting this standard
- Applicable legal and administrative requirements.
- Clearly state legal and other requirements with respect to campaign contributions to elected officials.
- Require developers to report breaches of the Code of Conduct to the City Manager
- Prohibit attempts to privately influence decision makers who will be conducting quasi-judicial hearings and making decisions based on those hearings
- Require them promptly to report violations of the conduct expectations or illegal behavior to the City Manager, law enforcement, a designated hotline, or other appropriate designee
- Require the developer/contractor/lobbyist to acknowledge in writing receipt of requirements regarding expected behavior and their agreement to abide by an ethics and/or code of conduct.

EDRP recommends that the City Manager establish a Code of Conduct for developers that contains certain components. These are intended to be informative about the development process and developers appropriate role in it. The guidelines should clearly state applicable legal and administrative requirements and should articulate legal and other requirements with respect to campaign contributions to elected officials

The rules also advise them of duties they have and restrictions they face if they choose to do business with the city. These should include applicable restrictions. Specifically, developers should be prohibited from giving campaign contributions to city elected officials as proscribed by law and as set out elsewhere in this report. The guidelines should also underscore the impropriety of their attempting to privately influence decision makers who will be conducting quasi-judicial hearings and making decisions based on those hearings.

Finally, the guidelines should address a developer's reporting duties. These standards should require them promptly to report violations of the conduct expectations or illegal behavior to the City Manager, law enforcement, a designated hotline, or other appropriate designee. Specifically, developers should be required to report any attempt by an elected officials to solicit a campaign contributions when the same is not permitted.